2018 IL App (5th) 170239-U

NO. 5-17-0239

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

TANGULA BROWN,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	St. Clair County.
	)	
v.	)	No. 16-MR-177
	)	
BI-STATE DEVELOPMENT AGENCY,	)	
d/b/a Metro Transit,	)	Honorable
	)	Robert P. LeChien,
Respondent-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE BARBERIS delivered the judgment of the court.
Justices Goldenhersh and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: Appeal dismissed for lack of appellate jurisdiction where the respondent failed to file a timely notice of appeal, or file a motion supported by a showing of reasonable excuse for its failure to timely file a notice of appeal.

¶ 2 This case arises out of the appellee's, Tangula Brown's, workers' compensation claim, and the subsequent decision filed by the Illinois Workers' Compensation Commission (Commission) in favor of the appellant, Bi-State Development Agency doing business as Metro Transit (Metro), regarding the interpretation of the terms of a settlement contract. For the following reasons, we dismiss the appeal for a lack of appellate jurisdiction.

¶ 3 I. Background

¶ 4 On May 19, 2014, Brown filed an application for adjustment of claim for compensation under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2014)) alleging injury to her left knee as a result of stepping on broken sidewalk concrete on April 10, 2014. Brown received temporary total disability (TTD) benefits following this work accident. Metro agreed that Brown had sustained a contusion to her left leg and knee but disputed liability for Brown's meniscus tear.

¶ 5 On June 5, 2014, following a section 12 independent medical examination, Dr. Milne submitted a report stating that Brown had suffered a contusion to her left knee, but her torn meniscus was attributable to degenerative joint disease and degeneration. Dr. Milne also indicated that surgery on her meniscus was necessary, however, it was not necessitated by the April 10, 2014, work accident. Shortly thereafter, Brown filed a section 19(b) petition (820 ILCS 305/19(b) (West 2014)) to seek authorization and benefit coverage for the recommended meniscus tear surgery.

¶ 6 On July 10, 2014, prior to the agreement to settle, the arbitration hearing was held. At the hearing, the arbitrator discussed Brown's section 19(b) petition. Brown advised the arbitrator that Metro had contacted her and asked her to return to work based on Dr. Milne's report. Relying on Dr. Milne's report, Metro denied a causal relationship between Brown's need for surgery on her meniscus and the alleged April 10, 2014, work accident. The parties ultimately determined, off the record, that Brown would agree to undergo surgery on her meniscus, and that the medical "bills would be placed through payment by her group insurance. Miss Brown will continue to receive TTD benefits."

¶ 7 On July 29, 2014, Brown underwent the surgical procedure on her meniscus. The medical records and medical bills associated with these services were forwarded to Metro on November 1, 2014.

¶ 8 On March 20, 2015, the Commission approved a settlement contract, drafted by Metro, whereby Metro agreed to pay 17.5% of the left leg for the left shin and knee contusion. The contract confirmed that Metro had paid all medical bills related to the left shin and knee contusion, and agreed to hold Brown harmless for any medical bills paid to date by group health insurance. The contract did not indicate unpaid expenses in the allotted segment of the contract.

¶ 9 Following settlement, Metro's group health carrier and its workers' compensation carrier denied charges for Brown's July 29, 2014, meniscus surgery. Metro argued that it was only liable for the expenses pertaining to the "contusion" and not the meniscus tear. In response, Brown filed a petition for penalties pursuant to sections 16, 19(*l*), and 19(k) of the Act. See 820 ILCS 305/16, 19(*l*), 19(k) (West 2014). Brown contended that, based on the contract language, Metro was liable for all expenses, including her surgery procedure to repair her meniscus tear. Specifically, Brown argued that Metro had drafted the settlement contract to state that Metro would hold Brown harmless for any medical bills paid by her group health insurance to date. As such, Brown argued that Metro was liable for all medical expenses, and that any ambiguity in the settlement contract should be interpreted against Metro.

¶ 10 On May 18, 2016, the Commission concluded that the language in the settlement contract did not include the medical expenses for Brown's meniscus surgery. The

Commission stated that "[d]espite its refusal to accept liability for the meniscus injury, [Metro] agreed to pay temporary total disability benefits after [Brown] submitted the bills related to the prospective surgery to Brown's group health insurance carrier. [Brown] agreed to that arrangement." The Commission ultimately found that the settlement contract was unambiguous, as Metro had "settled the claim only relating to the knee/shin contusion and not for any meniscus injury. It paid all expenses associated with the condition for which it settled pursuant to the contract." In finding in favor of Metro, the Commission noted that Metro had disputed liability for the meniscus tear condition throughout the litigation, and "[s]imply because group insurance denied the claim does not mean that Respondent accepted liability for a condition in addition to the one for which it settled." Brown filed a timely notice of appeal to the circuit court of St. Clair County on May 25, 2016.

¶ 11 Following a hearing on October 26, 2016, for which Metro failed to appear, the circuit court requested both parties to submit proposed orders within 14 days. In an order dated November 7, 2016, the court reversed the Commission finding that the language in the settlement contract was ambiguous. In doing so, the court stated:

> "It is clear from review of the Commission's decision that the Commission placed significance only on the fact that the injury was listed as 'contusion' and ignored the rest of the ambiguous contract drafted by Defendant in its entirety. Defendant's claim that it never intended to pay for any expenses claimed to be related to Plaintiff's contusion is belied by the fact that on the front page of the contract, it is [*sic*] indicates that it had paid *all* medical bills." (Emphasis in original.)

Moreover, the court found that Metro "deliberately made itself liable for medical expenses to escape further litigation. It not only claimed it paid *all* of Plaintiff's medical

expenses, but also promised to hold Plaintiff harmless from expenses paid by group health insurance." (Emphasis in original.) Furthermore, the court stated that had Metro wanted to "absolve itself of liability for disputed expenses, then the contract lacks any explanation as to why [Metro] chose not to list disputed expenses for which it had not paid and why [Metro] and [Brown] agreed to run disputed bills through group insurance and have the group insurance carrier deny said claim." Although the court determined that Metro was liable for all unpaid medical expenses, it did not award Brown penalties and fees.

¶ 12 On December 27, 2016, Metro filed a proposed order, drafted by Metro, labeled "Proposed Order of Respondent/Appellee, Bi-State Development Agency." Shortly thereafter, on January 3, 2017, the circuit court entered Metro's proposed order confirming the Commission's May 18, 2016, order. Given that the court's January 3, 2017, order was in direct contradiction to the court's November 7, 2016, order, Brown filed a motion to reconcile the record.

¶ 13 On May 3, 2017, the circuit court held a hearing on Brown's motion to reconcile the record. On May 4, 2017, the court entered an order stating that the November 7, 2016, order was a final order, which neither party appealed within 30 days. The court noted that there was "no proof offered to suggest counsel for [Metro] did not receive this order." The court determined that the January 3, 2017, order had been mistakenly entered, thus, it was invalid, void in all respects, and would be stricken from the record.

¶ 14 On May 15, 2017, Metro filed a petition to vacate the circuit court's November 7, 2016, order, pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS

5/2-1401 (West 2016)), alleging that it never received a copy of the court's order until April 13, 2017. Metro asserted that on October 26, 2016, following the hearing on Brown's appeal to the circuit court, the court entered an order directing the parties to submit proposed orders within 14 days. Based on the court's directive, November 9, 2016, was the parties' deadline to submit their proposed orders. Metro asserted that the court entered its order on November 7, 2016, two days before the deadline, and one day before Metro filed its proposed order on November 8, 2016. On April 18, 2017, Metro notified the court that there were two conflicting orders entered on November 7, 2016, and January 3, 2017.

¶ 15 On May 31, 2017, Brown filed a petition requesting the circuit court to deny Metro's section 2-1401 petition to vacate the November 7, 2016, order. Brown asserted that because Metro failed to timely file a notice of appeal within 30 days of the court's November 7, 2016, final order, the court lacked jurisdiction to hold a hearing. Moreover, Brown contended that the court still lacked jurisdiction even though Metro argued that it did not receive a copy of the court's order, and that a section 2-1401 petition to vacate "could not be used as a vehicle [to] salvage [its] right to appeal. If the Defendant had been monitoring the case as required by law, it would have become aware of the Court's November 7, 2016 Order."

¶ 16 On June 15, 2017, the circuit court, relying on *Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d 143 (1994), found that Metro had failed to present a meritorious defense under section 2-1401. Shortly thereafter, Metro filed a motion for stay of execution of judgment and for approval of proof of self-insurance as bond. The court subsequently granted Metro's

motion, ordered the stay of execution of the judgment, and found that the proof of insurance was sufficient to serve as security for the payment of the judgment. Metro filed a timely notice of appeal.

¶ 17 II. Analysis

¶ 18 We first address whether the circuit court had authority to grant the relief sought by Metro's filing of the section 2-1401 petition to vacate. Brown contends that the court lacked jurisdiction after 30 days had lapsed following the entry of the November 7, 2016, order, and that Metro had failed to take appropriate legal action to delay the 30-day period. In response, Metro argues that the distinguishing factors between this case and *Mitchell*, the case the circuit court relied on, is that, here, "the court failed to abide by its own deadline for filing of proposed orders, and caused prejudice to Employer by entering an order in Employer's favor. This led Employer to believe it had prevailed on the judicial review on [January 3, 2017]; and it eliminated any reason for Employer to discover the conflicting order, or to file a request for an extension of time to file a Notice of Appeal of the November 7, 2016 Order." We disagree.

¶ 19 Illinois Supreme Court Rule 303(a)(1) (eff. Jan. 1, 2015) provides that notice of appeal from final judgments in civil cases "must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from." Illinois Supreme Court Rule 303(d) (eff. Jan. 1, 2015) provides for an extension of this time period for an additional 30 days "[o]n motion supported by a showing of reasonable excuse for failure to file a notice of appeal on time ***." Metro did not comply with

Illinois Supreme Court Rule 303; thus, Brown requests this court to affirm the circuit court.

¶ 20 Similar to the circuit court, we, too find *Mitchell* instructive. In *Mitchell*, 158 Ill. 2d at 146, the circuit court entered a final order on March 1, 1991, setting aside the Commission's decision and reinstating the arbitrator's decision. Although the docket sheet entry indicated that an order had been filed on March 1, 1991, the clerk and Mitchell's counsel were unable to locate the order. *Id.* Following conference with opposing counsel and the judge, the court reporter provided Mitchell's counsel with an unstamped copy of the order, dated February 27, 1991. *Id.* As a result of the conference, Mitchell filed a section 2-1401 petition seeking the court's withdrawal or vacation of the March 1, 1991, order. *Id.* at 146-47. Following timely notice of appeal, the appellate court upheld the jurisdiction, considered the merits of the underlying issues, and found that the circuit court had erred in reversing the Commission. *Id.* at 147.

¶ 21 Fiat appealed to the Illinois Supreme Court requesting the court to reverse the appellate court's ruling. *Id.* In reversing the appellate court and finding a lack of appellate jurisdiction, our supreme court noted that Mitchell had failed to comply with Illinois Supreme Court Rules 303(a) and 303(e) (eff. Feb. 1, 1994), which govern the appeal procedure. *Id.* at 147-48. Ultimately the supreme court determined that "Mitchell's counsel apparently did not receive actual notice of the March 1 order, even if caused by clerical oversight, does not excuse counsel's failure to monitor his case closely enough to become aware that the circuit court had ruled." *Id.* at 151. As such, after 30 days had lapsed from the time the circuit court entered its final order disposing of the worker's

compensation claim, the court lost jurisdiction over the matters resolved in the order and a section 2-1401 petition would not extend the time. *Id.* at 149.

¶ 22 Similar to *Mitchell*, Metro alleged that it had not received actual notice of the circuit court's November 7, 2016, order. Even if caused by a clerical error, however, the record contains the November 7, 2016, order, and a docket entry is listed for November 7, 2016, as "CLS: JUDGMENT." Because " 'actual notice is not required, so long as the order appealed from was expressed publicly, in words and at the situs of the proceeding' " (*Mitchell*, 158 Ill. 2d at 148 (quoting *Granite City Lodge No. 272, Loyal Order of the Moose v. City of Granite City*, 141 Ill. 2d 122, 123 (1990))), the circuit court no longer had jurisdiction more than 30 days after it entered the November 7, 2016, final and appealable order.

¶ 23 Metro also contends that, even though it timely filed its requested proposed order on November 8, 2016, the court was in error when it failed to abide by its own 14-day filing deadline that it set at the October 26, 2016, hearing. Metro, however, not only failed to comply with Illinois Supreme Court Rule 303(a) (eff. Jan. 1, 2015), but it also failed to abide by the requirements set forth in Illinois Supreme Court Rule 303(d) (eff. Jan. 1, 2015), by not filing a motion "supported by a showing of reasonable excuse for failure to file a notice of appeal on time." Under Illinois Supreme Court Rule 303(d), when a party fails to file a timely notice of appeal, a reviewing court may grant leave to appeal if, within 30 days after expiration of the time to file the notice of appeal, the party has filed a motion providing a reasonable excuse for its failure to timely file the notice,

" 'accompanied by the proposed notice of appeal.' " *Vines v. Village of Flossmoor*, 2017 IL App (1st) 163339, ¶ 10 (quoting Ill. S. Ct. R. 303(d) (eff. Jan. 1, 2015)).

¶ 24 As such, the respondent was not without remedy. The respondent could have immediately brought the error to the court's attention or filed a request for late filing with our court. Instead, Metro filed a section 2-1401 petition to vacate the November 7, 2016, order. As previously stated, a section 2-1401 petition is not a proper vehicle for allowing "claimant a new 30-day clock to file a notice of appeal." (Internal quotation marks omitted.) *Mitchell*, 158 Ill. 2d at 149.

¶ 25 Accordingly, because Metro failed to come within the provisions of Illinois Supreme Court Rules 303(a) and 303(d) (eff. Jan. 1, 2015), the circuit court was without jurisdiction to hear Metro's section 2-1401 petition to vacate. Similarly, we lack appellate jurisdiction to hear this appeal.

¶ 26 III. Conclusion

¶ 27 The appeal is hereby dismissed for lack of appellate jurisdiction.

¶ 28 Appeal dismissed.